

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY  
10/19/2001

\*\*\* FILED \*\*\*  
10/24/2001  
CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

J. Pinter  
Deputy

LC 2001-000298  
Docket Code 512 Page 1  
FILED: \_\_\_\_\_

STATE OF ARIZONA  
v.  
RICHARD DANIEL SECREST

JENNIFER E GREEN  
  
MICHAEL J SMITH

GILBERT CITY COURT  
REMAND DESK CR-CCC

#### MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-224(A).

This matter has been under advisement since the time of oral argument on 10/15/01. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered of the proceedings from the Gilbert City Court, and memoranda and arguments of counsel.

Appellant has filed a timely notice of appeal from his convictions before the Gilbert City Court of Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1), and Driving With a Blood Alcohol Content in Excess of .10, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2).

The only issue raised on appeal is that the trial court erred in allowing improper rebuttal testimony presented by the state. Appellant alleges that the testimony of Gilbert Police Officer Pearce was improper because the police officer had already answered similar questions during his direct, cross, and re-direct examinations.

Decisions by a trial judge regarding admission and rebuttal testimony will not be disturbed on appeal without a showing that the judge committed an abuse of discretion.<sup>1</sup> Rebuttal evidence is intended to rebut new facts or new issues raised by a party's opponent.<sup>2</sup>

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<sup>1</sup> Catchings v. Glendale, 154 Ariz. 420, 743 P.2d 400 (App. 1987).

<sup>2</sup> State v. Young, 116 Ariz. 385, 569 P.2d 816 (1977).

In this case, the rebuttal testimony from Officer Pearce was specific and different from his previous testimony during the state's case in chief. The specific question from the prosecutor was:

You indicated his response to that, could he feel the effect of the alcohol was—oh yeah. You heard the Defendant testify he doesn't remember you asking that question, and he also testified he doesn't think you asked that question that way. Do you know if you asked that question that way, and what {his} response was?<sup>3</sup>

It is clear that Officer Pearce's questions on rebuttal were directed to responding to allegations made by the Defendant during his testimony. This Court can find no error in the admission of such rebuttal testimony.

IT IS ORDERED affirming the judgements of guilt and sentences imposed in this case.

IT IS FURTHER ORDERED remanding this matter back to the Gilbert City Court for all future proceedings.

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<sup>3</sup> Reporter's transcript of 03/8/01, at p. 529.